

MINUTES
OF
THE UTAH RADIATION CONTROL BOARD

September 8, 2006

Held at Department of Natural Resources

Conference Room 1060

1594 West North Temple

Salt Lake City, Utah 84114-4850

BOARD MEMBERS PRESENT

Kent Bradford J. Bradford, P.G., Chair
Stephen T. Nelson, Ph.D., Vice Chair
Dianne R. Nielson, Ph.D., Director of DEQ
Dane L. Finerfrock, Executive Secretary
Rod O. Julander, Ph.D.
Gregory G. Oman, D.D.S., B.S.
Patrick D. Cone
Frank D. DeRosso, MSPH, C.I.H.
Joette E. Langianese, Commissioner
Elizabeth Goryunova
Peter A. Jenkins
Robert S. Pattison, B.Sc.

BOARD MEMBERS ABSENT/EXCUSED

Joseph K. Miner, M.D., MSPH
John W. Thomson, M.D.

**DRC STAFF/OTHER DEQ MEMBERS
PRESENT**

Philip Griffin, DRC Staff
Craig Jones, DRC Staff
Loren Morton, DRC Staff
Patricia Adams, DRC Staff
Fred Nelson, Attorney General's Office
Laura Lockhart, Attorney General's Office
Bill Craig, DRC Staff
Donna Spangler, DEQ/Office of Policy and Planning

PUBLIC

Robert Baird, URS
David Frydenlund, IUC (USA) Inc.
Mark Ledoux, EnergySolutions, LLC
Tye Rogers, EnergySolutions, LLC
Dan Shrum, EnergySolutions, LLC
Ron Hochstein, IUC
Lynn Stevens, San Juan County
Commissioner
Travis Stills, Energy Minerals Law Center
Jill Sweet, Gamma West
Rob Hughes, Parsons Behle Latimer
Joel Ban, Attorney At Law
Vanessa Pierce, Heal-UT
Sarah Fields, Sierra Club
Ken Sleight, Canyon Country Zeph
Naomi Franklin
Michael A. Zody (Parsons Behle Latimer)

GREETINGS/MEETING CALLED TO ORDER

The Utah Radiation Control Board convened in the Department of Natural Resources, Room 1060, 1594 West North Temple, Salt Lake City, Utah. Kent J. Bradford, Chair, called the meeting to order at 2:04 p.m. He welcomed the Board Members and the public. Kent J. Bradford indicated that if the public wished to address any items on the agenda, they should sign the public sign-in sheet. Those desiring to comment would be given an opportunity to address their concerns during the comment period.

I. APPROVAL OF MINUTES (Board Action Item)

a. Approval of August 4, 2006, Minutes

Kent J. Bradford asked Board Members for corrections to the minutes of August 4, 2006.

Stephen T. Nelson, Ph.D. offered a correction. On page 5 in the second paragraph the minutes should say "current not currant".

**MOTION WAS MADE BY ROD O. JULANDER, PH.D. TO APPROVE
THE MINUTES OF AUGUST 4, 2006 AS AMENDED.
SECONDED BY ELIZABETH GORYUNOVA**

MOTION CARRIED AND PASSED UNANIMOUSLY

II. RULES (Board action items)

a. Approval of the Five Year, Notice of Review and Statement of Continuation for Rules: R313-22, 25, 28, 32, 36, and 70.

Philip Griffin, Health Physicist, informed Board Members that every five years the Division is required to review the rules to see if they are still needed and if they need to be updated or corrected. The rules being reviewed now are R313-19, R313-22, R313-25, R313-28, R313-32, R313-36, and R313-70. The review has revealed that each rule must be continued. Furthermore, changes need to be made to rules R313-25, R313-28, R313-36, and R313-70. The Division would bring the substantive rule making actions before the Board on or before the December Board Meeting. Rules R313-19, R313-22, R313-25, R313-28, R313-32, R313-36, and R313-70 are still necessary for the effective regulation of sources of radiation in Utah, and the Executive Secretary recommends their continuation.

Recommendation

The Executive Secretary recommends that the Board approve the aforementioned rules for continuation, and recommends their directing Staff to file the Notice of Continuation with the Division of Administrative Rules on or before October 10, 2006.

MOTION WAS MADE BY PATRICK D. CONE TO COMPLY WITH THE RECOMMENDATION.

MOTION WAS SECONDED BY ROD O. JULANDER, PH.D.

MOTION CARRIED AND PASSED UNANIMOUSLY.

III. RADIOACTIVE MATERIALS LICENSING/INSPECTION

No Items

IV. X-RAY REGISTRATION/INSPECTION

No Items

V. RADIOACTIVE WASTE DISPOSAL (Board action items)

- a. Discussion of the Board's Revisions and Concurrence to the Report:
"Evaluation of Closure, Post-Closure, Perpetual Care and Maintenance of
Hazardous Waste and Radioactive Waste Treatment and Disposal
Facilities." Stephen T. Nelson, Ph.D., Gave the Following Update:**

"This report was discussed at the last Board meeting. Members requested more information. Two weeks ago, Kent Bradford and I met with the Executive Secretary and Robert Baird of URS Corporation to discuss the resolution and disposition of some comments that had been submitted by Patrick Cone, Peter Jenkins, Kent Bradford, and myself. The nature of the comments fell in four areas."

"One concern was the accumulation of funds by interest into the Perpetual Care Fund. What if EnergySolutions does not continue to operate for twenty more years; and therefore, not continue to pay into the Perpetual Care Fund. What if the institutional control period was less than a hundred years or there was a need to use the fund earlier? What contingencies were built into the financial assurances related to the facility?"

"What was the basis of the calculations that were used to establish whether or not the various funds were sufficient? These concerns fell into two areas. What standard was used to estimate third party costs, and who had done the estimating? Was the estimating done by URS, independently of EnergySolutions, or was it a matter of URS reporting estimates that had been provided by EnergySolutions and then reviewed by the Executive Secretary. It is in general the latter that is the case."

“The final concern was that the report, as written, sounded like it was a “work product” of the Board--rather than a report that was prepared in hopes of obtaining the Board’s concurrence and approval. This final concern has been addressed. It states in the draft that the report is a product of a contractor, working on behalf of the Division, and the report is being prepared for the Board’s approval.”

“It is my hope that you have all read the current version of the report, and that you can see the changes that have been made in the strike-out, red-line, and comment-flags located in the margins.”

“I still have a few technical or editorial comments. I will not bring those up here. The section on site-ownership was not strong enough. I would prefer the language in the report to say that the Legislature should begin to make progress to final disposition of the issue, rather than the Legislature should resolve ambiguities.”

“The report offers two options for the Perpetual Care Fund. The first, recommends the Legislature’s amending the statute and requiring a large payment to be made in the near future. The second is to amend the statute to require that future payments made into the Perpetual Care Fund be based on the percentage of capacity consumed in each year. I prefer the former rather than the later, because there is much of the capacity that is now occupied. If for some unknown reason EnergySolutions would find it necessary to cease operations, there is a large portion of perpetual care liability that will not have enough principal to earn interest for the facility’s perpetual care. I, personally, think the fund needs to be “front end loaded.”

“I do not see references for tables for standard, cost-estimation procedures that are used by EnergySolutions and the Division to verify cost estimates by EnergySolutions. I think it would be useful for the Legislature to be able to see some of those references.”

Kent Bradford: “Any other comments?”

Elizabeth Goryunova: “In the future can analysis be done by data collected by someone not directly involved in the situation?”

Kent Bradford: “The Division does review all data submitted by EnergySolutions. Maybe the report should state that more clearly.”

Elizabeth Goryunova: “That would satisfy me.”

Kent Bradford: “At the last meeting, I said that I was concerned with the life of the facility. Right now it is based on the business plan of the company. But, I am satisfied with the two recommendations that Stephen T. Nelson presented. One was a one-time, up-front payment or having future annual contributions

that are paired with the amount of depletion of the disposal capacity that is used up each year.”

Robert Baird: “I would like to respond to the issue of the DRC Staff review. On page 3-8, question 3.9 the report states, these estimated costs are the most recent costs revised and updated by owners/licensees and reviewed by UDRC. Following UDRC’s independent review to ensure that applicable requirements were satisfied, the Executive Secretary accepted them as an adequate basis for determining required financial assurances. Such costs are revised and independently reviewed by Division Staff annually and revisions made until applicable requirements are satisfied.”

Stephen T. Nelson: “The report does not say how or what methodologies the DRC Staff employ to make their reviews.”

Robert Baird: “That could be incorporated.”

Rod O. Julander: “Could we get a response from the Division as to why they did not insist on more up-front payment?”

Dane L. Finerfrock: “I was not party to the discussions when the Perpetual Care Fund was set up, but I know it was a negotiated number between the Former Executive Secretary, the Legislature, and the Previous Owner of Envirocare.”

Stephen T. Nelson: “Is it safe to say that that \$400,000.00 annual figure is a creation of the Legislature?”

Dane L. Finerfrock: “Yes. It is.”

Kent Bradford: “I appreciate the work that has been done and is being done on this red line report. As a Board, we need to move on with this.”

Patrick D. Cone: “You, as a subcommittee, did a nice job of incorporating our comments into the report. I agree with Mr. Nelson that some of the options could be a little stronger especially on funding. I am concerned that the fund could be raided in the future. There could be a mechanism to put the fund in a lock box. Thirdly, we should mark this facility so that 200 years from now a subdivision is not built on it.”

Dane L. Finerfrock: “Tooele County has controls in place. There are restrictive covenants on the deeds. This controls it legally. In a physical sense, there are fences and granite markers will be placed around the facility. These markers are modeled after the markers that the Department of Energy developed. They are granite that has been etched at a certain depth with a description of the material.”

Kent Bradford: "The report to the Legislature has a statement that funds have been diverted in the past and we recommend the Legislature should resist any pressure to divert funds from the Perpetual Care Fund to other applications."

Frank D. DeRosso: "At the last meeting we charged the Division with providing the Board data on how much waste has been received at the facility and how much capacity remains."

Dane L. Finerfrock: "Yes. That will be provided to the Board at the October meeting."

Dianne R. Nielson: "I heard two Board Members suggesting there should be a higher, up-front payment. Is this something that should be put into the report?"

Kent Bradford: "I agree. If Board members would like to make changes or a motion stating their changes, I would like to hear them."

Robert Baird: "Chapter four contains the Board's recommendations. If you are not satisfied with those and you want to make changes, URS will incorporate those for you."

Patrick D. Cone: "I would like to make a motion to replace some of the "should" language with "shall" language such as in the first recommendation of 4.2."

Kent Bradford: "I would entertain that motion. However, the Board cannot mandate the Legislature. We have not weighted the recommendations. We could do that, and recommend one over another."

Patrick D. Cone: "I will change the language to recommend."

Kent Bradford: "Would you restate your motion one more time?"

PATRICK D. CONE MADE THE MOTION TO CHANGE THE FIRST RECOMMENDATION UNDER 4.2 TO REPLACE "SHOULD" IN THE FIRST SENTENCE WITH THE WORD "SHALL." AND THE LEGISLATORS SHOULD CONFIRM THAT "TRUE VALUE" FOR THE FUND IS WHOLLY FUNDED AT THIS POINT IN TIME.

ROD O. JULANDER SECONDED THE MOTION

Dianne R. Nielson: "I do not have a concern that the fund be funded at a higher rate up-front. But, I do have a concern about saying that it ought to be fully funded at this time."

Patrick D. Cone: "I meant prorated for time."

Kent Bradford: "I am not clear on how that is different than it is currently written other than changing the "should" to "shall."

Patrick D. Cone: "It is strong advice, and the Board believes it should occur."

Dianne R. Nielson: "I am trying to remember what the Legislature's word choice is in their use of shall and should. When we say "the Legislature shall," it sounds like we are commanding them. Are we saying that you not only should do it, but we strongly urge you to, or we believe that the Legislature should direct this to happen? I am used to the Legislature saying to me "you shall do something." That is within their authority. I agree with what Patrick is saying. The use of the word shall, as opposed to some other way of telling them they should do something, is a concern to me."

Patrick D. Cone: "I will amend my motion to say that we strongly support this option."

Kent Bradford: "So, your motion is to add language that the Board strongly supports the option of an immediate, one-time contribution to the fund to bring it to an adequate level. That is your motion?"

Patrick D. Cone: "Yes."

Kent Bradford: "Is your second still valid?"

Rod O. Julander: "Yes."

Dane L. Finerfrock: "I need to be clear. And, I think Patrick also needs some clarity. In the recommendation, there are two options given. And what Patrick would like this paragraph to say is that the Board strongly recommends the first option. Further, the fund is to be made adequately funded based on how much of the total capacity has been consumed, and from that point forward a fee should be paid into the Perpetual Care Fund based upon the amount of capacity that is being used annually?"

Patrick D. Cone: "That is correct. It is like a "pay as you go," and prorated by volume."

Dane L. Finerfrock: "Did you want to leave the second option in here, or were you suggesting that the second option be stricken?"

Patrick D. Cone: "I would leave the second option in there."

Dane L. Finerfrock: "O.K."

Kent Bradford: "We should be clear that the one-time payment is the second option listed in the first recommendation."

Robert Baird: "If I understand the motion, it is for the Board to strongly recommend the second option, which is the requirement for an immediate, one-time contribution to the Perpetual Care Fund to bring the fund to an adequate level. Also, the first statement would be removed, which was a progressive-payment based on the capacity."

Kent Bradford: "My understanding is that we "rolled" that into the end. We said we strongly urge the one-time contribution to increase the funding, and also strongly support "going forward" with annual payments that correspond with the amount of storage capacity that is used each year."

Robert Baird: “So, it is a blend of the two recommendations that were stated separately. So again, the intent here is that we strongly support an immediate, one-time payment to bolster the value of the fund and from that time forward to base additional charges or fees on the depleted or consumed capacity.”

Stephen T. Nelson: “I have no reason to question EnergySolutions’ business plan, but business plans can change. Should it change, there could be a large facility out there. I really like this proposed amendment.”

Kent Bradford: “If there is no other discussion, the chair would call for a vote. All in favor of adopting this change to the report, say aye. Opposed, say no.”

MOTION PASSED UNANIMOUSLY.

Kent Bradford: “Chair would entertain a motion to send this report as finalized to the Legislature.”

ELIZABETH GORYUNOVA MADE THE MOTION TO SEND THIS REPORT AS FINALIZED TO THE LEGISLATURE.

JOETTE E. LANGIANESE SECONDED IT.

Kent Bradford: “All in favor, say aye. Opposed, say no.”

Stephen T. Nelson abstained.

MOTION PASSES WITH ONE ABSTENTION.

Robert Baird: “I request that I meet with staff on the wording for the report.”

b. Cedar Mountain Environmental Inc. Request for Agency Action; Radiation Control Board “Order Granting Motion to Dismiss.”

Kent Bradford: “This is an item that we ruled on at the last meeting, and it will be discussed by Fred Nelson.”

Fred Nelson: “At the last meeting the Board heard the request for agency action, motion to dismiss was made by Cedar Mountain Environmental. The Board ruled on that matter. The Board also separately asked for the information that was discussed from the Executive Secretary. I have prepared a draft order for the Board’s consideration. It is an order that is required by the Administrative Procedures Act to be issued. The order puts in writing the decision of the Board. I request that you approve that order.”

Kent Bradford: “If there is no discussion, the Chair would entertain a motion to accept the document as written.”

PATRICK D. CONE MADE THE MOTION TO ACCEPT THE DOCUMENT AS WRITTEN.

GREGORY G. OMAN SECONDED IT.

Kent Bradford: “All in favor of adopting this item, as written, say aye. All opposed, say no.”

THE MOTION PASSED UNANIMOUSLY.

VI. URANIUM MILL TAILINGS UPDATE (Board action item)

a. Request for Agency action: Glen Canyon Group, Sierra Club

This portion of the minutes was transcribed by a court reporter, and it is in the attached document.

VII. OTHER DIVISION ISSUES

No Items

VIII. PUBLIC COMMENT

Fred Nelson advised the public that by granting standing, the Board has now initiated a formal proceeding, and the Board is considered a judge. Communication outside that formal adjudication is not appropriate. So to the extent that parties want to comment on this issue, it would not be appropriate, until that adjudicative process is complete.

The list was reviewed to see if any of the public would like to address the Board. Everyone decided to hold their comments until the appropriate time.

IX. OTHER ISSUES

No Items

Rod O. Julander said this would be his last meeting, and he complimented the Executive Secretary and the Staff. He said he had been on a number of boards, and the general rule had been that they “try to move the Board.” He said the Division had been helpful in providing information and very good about not being pushy. He said “it has been a pleasure to work with them, as well as all of you.”

Kent Bradford thanked Rod Julander for his service.

Next Scheduled Board Meeting: October 6, 2006, DEQ Bldg. #2, Conference Room 101, 168 N 1950 West, Salt Lake City, Utah.

MOTION WAS MADE BY GREGORY G. OMAN TO ADJOURN THE BOARD MEETING

SECONDED BY STEPHEN NELSON

MOTION CARRIED AND PASSED UNANIMOUSLY

THE BOARD MEETING ADJOURNED AT 3:59 P.M.